United States Department of Labor Employees' Compensation Appeals Board

S.S., Appellant)
5.5., Appendit))
and	Docket No. 07-1631
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION Linthiaum MD Employer	Issued: April 9, 2008)
ADMINISTRATION, Linthicum, MD, Employer))
Appearances:	Oral Argument March 12, 2008
Appellant, pro se	
<i>No appearance</i> , for the Director	

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge MICHAEL E. GROOM, Alternate Judge JAMES A. HAYNES, Alternate Judge

Appellant filed his appeal with the Board on May 30, 2007 from an April 23, 2007 decision of the Office of Workers' Compensation Programs finding an overpayment of compensation and that he was at fault in its creation.

The Office accepted that on April 18, 2004 appellant, than a 24-year-old luggage screener, sustained a lumbar sprain while lifting luggage. He stopped work and did not return. Appellant received compensation for total disability from June 13, 2004 to November 6, 2005. He began full-time private-sector employment on May 1, 2006.

In its April 23, 2007 decision, the Office found that appellant accepted \$3,780.21 in unauthorized compensation for the period May 1 to July 8, 2006 as he received compensation for total disability while working. The Office further found appellant at fault in creation of the overpayment and that the overpayment was not subject to waiver.

On review of the case record submitted by the Office, the Board finds that the record is incomplete. The Office asserts that a \$3,780.21 overpayment of compensation was created in appellant's case for the period May 1 to July 8, 2006. However, the case record as submitted to the Board contains payment logs only for the period June 13, 2004 to November 6, 2005. The Board cannot ascertain the amount of compensation appellant was paid for the asserted period of

overpayment. Therefore, the fact and amount of the overpayment cannot be established from the current case record.

Also, the Office has not established that appellant had any earnings for the period May 1 to July 8, 2006. The record contains a June 30, 2006 letter from appellant's private employer, stating that he had worked for the past four to six months in real estate development with a stated annual salary. While this letter is evidence of employment, it does not contain evidence of any actual weekly or monthly earnings. There are no pay stubs or other evidence of record showing that appellant had earnings during the asserted period of overpayment.

The Board finds that the evidence does not establish that appellant received either compensation or earnings from May 1 to July 8, 2006. Therefore, the Office has not met its burden of proof in establishing an overpayment of compensation for that period.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 23, 2007 is reversed.

Issued: April 9, 2008 Washington, DC

> David S. Gerson, Judge Employees' Compensation Appeals Board

> Michael E. Groom, Alternate Judge Employees' Compensation Appeals Board

> James A. Haynes, Alternate Judge Employees' Compensation Appeals Board